

REMARKS

Figure 9a was amended to depict the claimed garment attachment means and absorbent article attachment means. Support for the above amendment can be found throughout the specification, at for example, the original claims and page 11, lines 21 et seq.

Figure 10 was added to depict layers. Support for the above amendment can be found throughout the specification at, for example, page 4, line 15 – page 5, line 22, page 8, lines 19-30.

The paragraph at page 2, line 24, of the specification was amended to remove the term “Applicants” from the specification.

The Summary of Invention was amended to conform to the claims.

The Brief Description of the Drawings was amended to include descriptions of FIGS. 9a, 9b, 9c, and 10.

The paragraph beginning at page 5, line 4, was amended to provide identical language in the Detailed Description as in the claims. Support for the amendment can be found throughout the specification at, for example, original claims 3, 8, and 11.

The paragraph beginning at page 11, line 21, was amended to include reference numbers for the amendments made to FIG. 9a.

A new paragraph was added beginning at page 12, line 20, to provide a description for new FIG. 10. Support for this amendment can be found throughout the specification at, for example, page 4, line 15 – page 5, line 22, page 8, lines 19-30.

The abstract has been replaced with a new abstract. Support for this amendment can be found in the original and the pending claims.

Claim 1 was amended to remove recitation of a cover in the layered portion and to remove the recitation of a perforation as an element in claim 1.

Claim 2 was amended to correct a typographical error in the preamble and to correct claim dependency to new claim 13.

Claims 3 and 4 were amended to correct typographical errors in the preamble.

Claim 5 was amended to make the claim more grammatically correct and to remove recitation of limitations concerning the thong pantliner.

Claims 7 and 8 were amended to provide correct claim dependency to new claim 16.

Claim 9 was amended to remove recitation of a cover and a limitation of breathable to the backsheet.

Claim 13 was added to recite a perforation between the wing and the longitudinally extending edge. Support for new claim 13 can be found throughout the specification at, for example, original claim 1, FIGS. 1-8, and page 6, line 13 – page 7, line 13.

Claim 14 was added to recite a perforation between the wing and the longitudinally extending edge. Support for new claim 14 can be found throughout the specification at, for example, original claim 1.

Claim 15 was added to recite a perforation between the wing and the longitudinally extending edge. Support for new claim 15 can be found throughout the specification at, for example, original claim 1.

Claim 16 was added to recite certain limitations on the thong pantiliner. Support for new claim 16 can be found throughout the specification at, for example, original claim 5.

Claims 17 and 18 were added to recite certain limitations on the thong pantiliner. Support for new claims 17 and 18 can be found throughout the specification at, for example, original claim 5.

Claims 19 and 20 were added to recite certain limitations on the attachment wing. Support for new claims 19 and 20 can be found throughout the specification at, for example, original claim 9.

Claim 21 was added to recite certain limitations on the pantiliner. Support for new claim 21 can be found throughout the specification at, for example, original claim 9.

It is submitted that no new matter has been introduced by the foregoing amendments. Approval and entry of the amendments is respectfully solicited.

Notice of Non-Compliant Amendment

On March 4, 2003, the US Patent and Trademark Office mailed a Notice of Non-Compliant Amendment that was issued by the Examiner. The Examiner's careful review of the undersigned's attempt to comply with the Examiner's numerous formal objections coupled a single formal rejection under 35 USC § 112, second paragraph, is again most appreciated.

Turning to the specific grounds of alleged non-compliance:

- The Examiner asserted that "the amendment does not include an accurate version of the replacement paragraph/section." (Paper No. 8.) In particular, the Examiner pointed out that the "abstract last 3 lines does not agree with marked-up version." The clean version and the marked-up version were carefully reviewed. During the review, discrepancies were found in the first three lines, in addition to the last three lines found by the Examiner. The found discrepancies have been corrected

in this submission. If the Examiner still finds inaccuracies in the abstract, the Examiner is asked to contact the undersigned by telephone.

- The Examiner asserted that pages 10, 12, 14, 17, and 19 were missing from the response. Such pages should be included herewith. Should the Examiner find any pages missing in this Response, the Examiner is asked to contact the undersigned so that the pages can be faxed to the Examiner.
- The Examiner asserted that the amendment does not include a clean version of amended claim 1, (b)1). Without knowing the exact nature of the Examiner's position, one marking as found in claim 1, (b) 1), which is corrected in this submission.
- The Examiner asserted that the amendment does not include a marked-up or accurate version of the amended claims. In particular, the Examiner asserted that claims 7 and 8, lines 1 thereof and page 9, last line inaccurate, abstract last three lines does not correspond to clean. Regarding the abstract, the clean version and the marked-up version were carefully reviewed. During the review, discrepancies were found in the first three lines, rather than in the last three lines as asserted by the Examiner. The found discrepancies have been corrected in this submission. No inaccuracies were found between the clean version and marked-version of claims 7 and 8. The only changes that were seen were claim dependencies, which were accurately reflected. Should the Examiner still believe that there are inaccuracies between the clean version and marked-version of claims 7 and 8, the Examiner is asked to contact the undersigned by telephone. The Examiner also asserted that page 9, last line, was inaccurate. This last issue was included in a section directed to marked-up version of amended claims. It not seen where 1) page 9, last line, of Paper No. 7 is directed to amending claims and 2) there are any inaccuracies at page 9, last line of Paper No. 7. Should the Examiner still believe that there are inaccuracies at page 9, last line of Paper No. 7, the Examiner is asked to contact the undersigned by telephone

Objections

The Examiner objected to the abstract of the disclosure because the Examiner took the position that “legal terminology ‘mean for’ should be avoided,” “(iii)” should be deleted and the abstract is too long.) (March 15, 2002 Office Action (“OA”) at 2.) The Examiner required correction.

The Examiner’s careful review of the abstract of the disclosure is most appreciated. The abstract of the disclosure has been amended in order to overcome the Examiner’s objection. The Examiner is asked to remove this ground of objection in view of the above amendments.

The Examiner objected to the disclosure because:

- 1) The specification uses the term “Applicants,”
- 2) The scope of the Summary of Invention was believed to be “consistent” with the claims,
- 3) The Examiner queried as to “[w]here are Figures 9a-9c described bridging pages 3-4.

(OA at 2.)

Again, the Examiner’s careful review of the disclosure is most appreciated. In view of the Examiner’s comments, the disclosure has been amended. The Examiner is asked to remove this ground of objection in view of the above amendments.

The Examiner objected to the drawings for the following reasons:

- 1) Where is Figure 9? The descriptive text should be avoided;
- 2) Where is backsheet shown in figure 1?; and
- 3) In Figure 9, the line should be dashed to denote underlying structure.

The Examiner’s careful review of the drawings is most appreciated. As to item 1), the text in the Brief Description of the Drawings has been amended to remove any reference to FIG. 9. As to item 2), the Examiner is asked to review the formal drawings that were admitted by the Examiner to be in the file for the captioned application. It is submitted that the formal drawings remove the Examiner’s objection. As to item 3), the undersigned is confused. The Examiner queried in item 1) where is Figure 9, yet in item 3) the Examiner’s comments are directed to Figure 9. The Examiner is asked to clarify this ground of objection in the next paper issued for the captioned application. To the extent the Examiner meant to refer to FIG. 9a, the Examiner is asked to review amended FIG. 9a submitted herewith and comment on it in the next paper issued for the captioned application.

The Examiner objected to the drawings under 37 CFR § 1.83(a). (OA at 2.) The Examiner asserted that the drawings must show every feature of the invention specified in the claims. FIG. 9a and FIG 10 are submitted herewith in response to this ground of objection. In view of amended FIG. 9a and new FIG. 10, the Examiner is asked to remove this ground of objection.

The Examiner objected to the specification for allegedly “failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d) and MPEP §608.01(o).” (OA at 3.) The Examiner requested defining clear antecedent basis for claims 3, 8, and 11.

The Examiner’s careful review of the specification in view of the pending claims is most appreciated. Accordingly, the specification has been amended in an attempt to overcome this ground of objection. The Examiner is asked to withdraw this ground of rejection in view of such amendments.

The Examiner objected to claims 2-12 because of the following informalities:

- 1) in claims 2-4, line 1, “An” should be – The--;
- 2) in claim 9, line 2, “A” should be – a --;
- 3) in claims 6-8, “An” should be – The --; and
- 4) in claims 10-12, line 1, “A” should be – The --.

(OA at 3.)

The Examiner’s careful review of the claims is most appreciated. However, the Examiner asserted that claims 2-12 were objected to, but a specific objection for claim 5 could not be identified. The Examiner is asked to confirm whether claim 5 is objected to in the next paper issued for the captioned application.

Claim 9 has been amended in view of the Examiner’s careful review. The Examiner is asked to withdraw this objection in the next paper issued for the captioned application.

The Examiner’s objections in items 1), 3), and 4) above are respectfully traversed. It believed that there is no binding precedent, statute, or rule that requires dependent claims to begin with the word “The” as opposed to “A” or “An.” Therefore, no amendment to the claims is required and none has been made. The Examiner is asked to withdraw this formality requirement.

Indefiniteness Rejection

Claims 5-8 were rejected under 35 USC §112, second paragraph. (OA at 3.) In making the rejection, the Examiner asserted that “it is unclear [in claims 5 and 7-8] whether Applicant is claiming the subcombination of the wing or the combination of the wing and pantiliner. (*Id.*).

Claim 5 has been amended and new claim 16 has been added in view of the Examiner's comments. The Examiner is, accordingly, asked to withdraw this ground of rejection in view of the above amendments.

Anticipation Rejection

Claim 1-4 and 9-12 were rejected under 35 USC §102(b) as anticipated by Bien. (OA at 3.)

For the reasons set forth below, the rejection, respectfully is traversed.

At the outset, the rejection is unclear as to the information and reference being relied on by the Examiner. The Examiner asserted that "Bien" was relied upon. However, OA does not provide any information regarding to what "Bien" was intended to refer to.

While not required for the above reasons, the following is provided to expedite prosecution on the merits. For purposes of this response, it is presumed that the Examiner intended "Bien" to be U.S. Patent No. 5,704,929 ("Bien"). The Examiner is asked to confirm this presumption in the next paper issued in this application.

Bien discloses a pantiliner 20 that has portions or sections that can be removed or otherwise manipulated by the user to change and particularly reduce the dimensions of the pantiliner 20. (Column 6, lines 7-9.) Pantiliner 20 is made of a base pantiliner 20C and several removable sections. (Column 3, lines 21-22.) Pantiliner 20 is provided with a plurality of perforations arranged in the form of perforation lines. (Column 6, lines 10-12.) The perforation lines are provided in the same configuration as the periphery 26 of the pantiliner. (Column 6, lines 18-20.) The pantiliner 20 can be adjusted in size about 20 mm in its longitudinal dimension and in its transverse dimension. (Column 6, lines 25-27.) The base pantiliner 20C is that portion of the pantiliner that remains after all the removable sections have been removed. According to Bien, the pantiliner can have two flaps each of which are adjacent to and extend laterally from the side edge of the absorbent core. (Column 7, lines 29-32.) The flaps were described as being constructed of various materials including materials similar to the topsheet, backsheet, tissue, or combination of these materials. (Column 7, lines 44-46.) Bien also described that the flaps may be a separate element attached to the main body of the absorbent article or can comprise extensions of the topsheet and backsheet (i.e., unitary). (Column 7, lines 46-49.) Finally, Bien disclosed that the sides of the flaps could be adjusted using perforations. (Column 7, lines 57-59.)

In making the rejection, the Examiner directed "[s]ee Figures, abstract, column 1, lines 55 et seq, column 2, lines 1-4, 15-22, 24-32, column 4, lines 21-31, and 62-65, column 5, line 66, column 7, lines 55-57 and thus Figures of Mattingly which show claimed silhouette, column

6, line 7-column 7, line 7, col. 7, line 29 – column 8, line 16, i.e. claimed wing and perforation, column 8, lines 25-28, and thus column 8, lines 16-56 of Osborn. (OA at 3-4.)

The Examiner reasoned regarding claim 1, last line, and claim 2 that such is explicitly disclosed in the Bien patent. The Examiner concluded that “[I]n any case, the last line of claim 1 sets forth capability or function and since the Bien device **contains the same structure** as claimed, such structure is deemed inherent of the claimed function or property.” (OA at 4.)

With all due respect, the Examiner’s ground of rejection is difficult to understand. The Examiner rejected the claims under Bien, but in setting forth the basis of rejection, the Examiner cited to documents that were not part of the rejection, i.e., Mattingly and Osborn. For this reason, the rejection is improper and should be withdrawn.

While not required, the following is provided to expedite prosecution on the merits. In making the rejection, the Examiner appeared to rely on Mattingly for disclosure of the claimed silhouette and to Osborn for disclosure of a transfer layer.

As is well settled, anticipation requires “identity of invention.” Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim.

Because the Examiner has relied upon more than one document to make up for gaps left by the primary reference. The Examiner asserted that Bien “**contains the same structure** as required by the pending claims. Yet, the Examiner looked to Mattingly and Osborn to fill in the structural gaps left by Bien. Therefore, the rejection is improper and should be withdrawn

Furthermore, in a §102(b) rejection there must be no difference between what is claimed and what is disclosed in the applied reference. “Moreover, it is incumbent upon the Examiner to *identify wherein each and every facet* of the claimed invention is disclosed in the applied reference.” The Examiner is required to point to the disclosure in the reference “*by page and line*” upon which the claim allegedly reads.

The rejection fails to identify where in Bien each and every element of the claims is shown. The Examiner failed to assert where in Bien there is a recitation of the affirmatively required releaseably attached wing is found. While Bien discloses perforations may be used to **adjust the side of the flaps**, it is submitted that this not a disclosure of the required releaseably attached wing required in the amended claims. The disclosure relied on by the Examiner is insufficient as a matter of law to support a conclusion of anticipation, and for this additional reason, the rejection should be withdrawn.

Turning to claims 10-12, the Examiner asserted that the comments regarding claim 2 apply to claim 10. (OA at 4.) The Examiner also asserted that the structure of the kit is taught by Bien.

There is a “burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103. . . .” The rejection fails to provide any basis, let alone the requisite factual basis to sustain a rejection for anticipation. The Examiner did not state where in Bien there is disclosure to the claimed kit. For this reason, the rejection is improper and should be withdrawn.

Obviousness Rejection

Claims 5-8 were rejected under 35 USC §103(a) as being unpatentable over Maulhardt DE ‘026 “Maulhardt”. (OA at 4.)

For the reasons set forth below the rejection, respectfully is traversed.

Maulhardt discloses a sanitary napkin or panty shield (collectively “napkin”) with adhesive strips. (Title.) In particular, Maulhardt discloses a napkin with at least one adhesive strip on the underside whose longitudinal axis is at a right angle to the longitudinal axis of the napkin. (Page 3 (3), first paragraph.) When in use, the strip extends beyond the width of the napkin; when not in use, the protruding area of the strip on the area is folded up on itself across the width of the napkin. (Claim 1 and page 4, (5), second paragraph.) Maulhardt also discloses that the strip consists of a carrier strip that is equipped in the middle area on the side facing the napkin with a layer of adhesive, and has a layer of adhesive sensitive to pressure in the side section on the opposite side. (Claim 2.)

In making the rejection, the Examiner asserted that “[a]s best understood, claims 5-8 claim an attachment wing and claims 7-8 recite capability or function.” (OA at 4.) The Examiner referred to the figures of Maulhardt.

The Examiner also asserted, regarding the claimed capability or function, “the rationale set forth with regard to claim 1, last line, discussed supra, applies here, i.e., inherently capable.

The Examiner asserted with regard to claim 6, “see discussion of claims 2 and 10 supra, which discussion applies here.”

As is fundamental, a *prima facie* case of obviousness must be based on facts, “cold hard facts.” When the rejection is not supported by facts, it cannot stand.

Initially, it is noted that the amended claims require that the attachment wing attaches a thong pantiliner to a garment. The rejection fails to identify where in Maulhardt such a limitation can be found. That was the Examiner’s minimum burden.

Additionally, the Examiner has not asserted where in Maulhardt there is a disclosure of the affirmatively required cover for the claimed attachment wing. Therefore, the Examiner has not provided any motivation or suggestion for the claimed invention based upon the cited document. Accordingly, the rejection is improper and should be withdrawn.

Accordingly, for the reasons set forth above, entry of the amendments, withdrawal of the rejections, and allowance of the claims is respectfully requested. If the Examiner has any questions regarding this paper, please contact the undersigned.

Respectfully submitted,

By: 

Timothy E. Tracy
Reg. No. 39.401

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-6586
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